

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

**KC TRANSPORT, INC.
d/b/a KC TRANSPORT OF WEST
VIRGINIA, INC., LYNN COMPTON
and EDDIE COMPTON,**

Plaintiffs

v.

**Civil Action No. 2:18-cv-00005
Chief Judge Thomas E. Johnston**

**LM INSURANCE CORPORATION;
BB&T INSURANCE SERVICES, INC.;
and SELECTIVE INSURANCE COMPANY
OF AMERICA;**

Defendants.

**MOTION FOR RECONSIDERATION
BY BB&T INSURANCE SERVICES, INC.**

COMES NOW BB&T Insurance Services, Inc. (“BB&T”), by counsel Susan R. Snowden, Evan R. Kime, and the law firm of Jackson Kelly, PLLC, and moves, pursuant to Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure, for reconsideration of one issue left unaddressed by the Court in its January 26, 2020 Memorandum Opinion and Order (ECF No. 222) (“Court’s Order”). In support of this Motion, and as set forth in greater detail in the accompanying memorandum in support, BB&T states as follows:

1. The Court’s Order did not dismiss Plaintiffs’ claims for “Estoppel” and “Reasonable Expectation” based upon the Court’s understanding and belief that BB&T had not moved for summary judgment on those claims.

2. However, BB&T's Motion for Summary Judgment and Memorandum of Law in Support (ECF Nos. 183 and 184) ("BB&T's Motion") is not a "partial" Motion for Summary Judgment, and instead seeks dismissal of all of Plaintiffs' claims against it.

3. In BB&T's Motion, it argues that Plaintiffs' central factual allegation is that BB&T failed to secure West Virginia workers' compensation insurance for Plaintiff KC Transport, Inc. BB&T argues in its Motion that Plaintiffs cannot establish the existence of either tort or contractual duty on the part of BB&T to secure such insurance. Based upon these arguments, in its Motion, BB&T flatly states that "there is no genuine issue of material fact to support **Plaintiffs' claims against BB&T**, and BB&T is entitled to summary judgment **in this matter.**" BB&T's Motion, ECF No. 184, p. 2 (emphasis added). Accordingly, by its Motion, BB&T sought summary judgment dismissal of all of Plaintiffs' claims against it.

4. The Court's findings in its Memorandum Opinion and Order are dispositive of any possible claim for "estoppel" or "reasonable expectation" because the Court agreed with BB&T and held that no duty arises in favor of Plaintiffs under either Virginia tort or contract law.¹ In its Memorandum Opinion and Order, the Court held that the only legal duty that could be alleged by Plaintiffs against BB&T would be contractual in nature. The Court then held that Plaintiffs failed to provide evidence of a contract that would give rise to the existence of any contractual duties, and dismissed the Plaintiffs' breach of contract claims accordingly. The Court's holdings in this regard are that BB&T breached no legal duty to the Plaintiffs. Therefore, no cause of action lies against BB&T, including any claim for "estoppel" or "reasonable expectation."

¹ In addition, as explained in the accompanying Memorandum of Law, Virginia law does not recognize "estoppel" or "reasonable expectation" as standalone causes of action. Additionally, the Court has already rejected Plaintiffs' reasonable expectations argument in its Memorandum Opinion and Order, ECF No. 155, which granted summary judgment to LM Insurance Corporation.

WHEREFORE, BB&T respectfully requests that the Court modify its Memorandum Opinion and Order by entering a declaration that there is no genuine issue of material fact to support any of Plaintiffs' claims against BB&T, including the claims for "estoppel" and "reasonable expectation," and that BB&T is therefore entitled to summary judgment as to all of Plaintiffs' claims against it.

Respectfully submitted,

BB&T INSURANCE SERVICES, INC.,

By Counsel,

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CERTIFICATE OF SERVICE

I, the undersigned counsel, certify that on February 2, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and that service was made through the CM/ECF system on counsel of record as indicated below.

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